United Nations CCPR/C/120/D/2171/2012

International Covenant on Civil and Political Rights

Distr.: General
30 August 2017

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2171/2012*, **

Communication submitted by:	Petr Gatilov (not represented by counsel)
Alleged victim:	The author
State party:	Russian Federation
Date of communication:	7 April 2011 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 10 July 2012 (not issued in document form)
Date of adoption of Views:	13 July 2017
Subject matters:	Forced eviction from home and loss of the author's property
Procedural issue:	Exhaustion of domestic remedies
Substantive issues:	Privacy; protection of the law
Articles of the Covenant:	2 (1) (3), 6, 12, 14, 17 and 26
Article of the Optional Protocol:	5 (2) (b)

1. The author of the communication is Petr Gatilov, a citizen of the Russian Federation born in 1951. He claims to be a victim of violations by the Russian Federation of his rights under articles 2 (1) (3), 6, 12, 14, 17 and 26, of the Covenant. The Optional Protocol entered into force for the Russian Federation on 1 January 1992. The author is not represented by counsel.

The facts as submitted by the author

2.1 On 27 January 2005, the author was allocated apartment 5, located in building No. 48, Batovska microdistrict, City of Yakutsk, vacant since 12 September 2001 and

* Adopted by the Committee at its 120th session (3-28 July 2017).

** The following members of the Committee participated in the examination of the communication: Tania Maria Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

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belonging to the municipality, as social housing by decision of the Yakutsk department of municipal housing. The author and his family lived in the apartment until 2007.[1]

2.2. On 9 December 2005, the author was requested, orally, to leave his apartment by employees of the court bailiff service, who claimed that there was a dispute related to the ownership of the apartment. The author refused, claiming that there was no court decision requiring him to leave. On 27 July 2007, the Yakutsk City Court revoked the author's tenancy rights to the apartment, issued an eviction order and ordered the department of municipal housing to provide him with alternative, but equal, housing. The author claims that he was not informed of these proceedings, and therefore was not present. On 16 September, enforcement proceedings to evict the author were initiated by the court bailiff service. The author notes that as he did not receive procedural documents or a notice related to the enforcement proceedings, he was not notified about the time and date of the eviction.

2.3 On 19 September 2007, during the author's absence, armed court bailiff service officers broke into his apartment and removed all his belongings: clothing, furniture, documents, jewellery and money. The author was not told where his belongings had been transported. On the same day, the court bailiff service issued a decision that the enforcement proceedings had been completed. On 9 October, the author was informed that the alternative housing would be provided to him when the department of municipal housing had the available resources.

2.4 The author maintains that the actions of the court bailiff service violated his rights under article 40, paragraph 1, of the Constitution of the Russian Federation, articles 3 and 89 of the Housing Code of the Russian Federation and other domestic laws, as well as the court decision of 27 July 2007 that obligates the authorities to provide him with alternative housing before evicting him from the apartment in question.

2.5 On 29 October 2007, the author filed a complaint with the prosecutor's office to initiate criminal proceedings concerning the court bailiff's actions regarding his eviction without assigning him alternative housing. The complaint was rejected on 12 November. On 7 April 2008, the prosecutor's office reversed its decision of 12 November 2007 on the grounds that it had been issued in violation of the law. However, on 17 April 2008, the prosecutor's office again rejected the author's request, on the grounds that the bailiff service's actions were based on the court decision of 27 July 2007.

2.6 On an unspecified date, the author filed a complaint with the Yakutsk City Court, alleging that the court bailiff service employees had illegally broken into his home and removed his belongings. The author asked the court to initiate criminal proceedings and to order compensation of non-monetary damages stemming from the illegal actions of the State agents. On 30 May 2008, the court dismissed the author's complaint, stating that he had failed to provide evidence demonstrating criminal responsibility on the part of the court bailiffs.

2.7 On 29 July 2008, the author repeated his request to the prosecutor's office to initiate criminal proceedings against the actions of the court bailiffs. On 26 February 2009, the prosecutor's office rejected the author's request on the grounds of lack of evidence that a crime had been committed.

2.8 On 5 November 2008, the author received a letter from the department of municipal housing, stating that the court bailiff officers had acted beyond their duties while executing the court decision of 27 July 2007 with respect to the eviction, but not with respect to the provision of alternative housing. On 5 March 2009, the author received €47,000 from the municipality as compensation for the eviction. The author states that the amount of the compensation was not sufficient to compensate for the loss of the standard of living that he had enjoyed before the violation of his rights.

2.9 On 3 March 2010, the author was notified that his belongings were stored with the court bailiff service. On an unspecified date, the author repeated his request to the prosecutor's office to initiate criminal proceedings against the court bailiff service for his

[1] The copy of the tenancy contract provided by the author is dated 19 March 2005.

eviction and the failure to provide alternative housing. The request was rejected on 16 August.

2.10 On 17 September 2010, the author again complained to the Yakutsk City Court, alleging that he had not been informed of the date and time of the eviction and that he was not informed in time about where his belonging had been transferred. On 11 October, the court rejected the author's complaint because he had failed to provide documentation confirming criminal liability on the part of the bailiff officers. On an unspecified date, the author complained to the Supreme Court of the Republic of Sakha (Yakutia), which on 17 March 2011 rejected the complaint on the grounds of lack of jurisdiction over the matter.

2.11 On 23 September 2011, the author filed a complaint with the Yakutsk City Court, alleging that the court decision issued on 27 July 2007 was not fully executed, as he had not received alternative housing. His complaint was rejected by the court on 28 September, on the grounds that the complaint had to be brought under a different procedure. On 13 October, the author appealed to the Supreme Court of the Republic of Sakha (Yakutia), which dismissed the complaint on 9 November.

2.12 On 12 October 2011, the prosecutor's office overturned its decision of 26 February 2009, without substantial motivation, and redirected the author's complaint for review.[2] Having submitted all these complaints, the author claims to have exhausted all available and effective domestic remedies.

The complaint

3. The author claims to be a victim of violations by the State party of his rights under articles 2 (1) (3), 6, 12, 14, 17 and 26 of the Covenant.

State party's observations on admissibility and the merits

4.1 On 21 November 2012, responding to the author's allegations, the State party submitted that in February 2007, on the basis of a petition from the chief of the regional department of the federal security service, the prosecutor's office decided that the apartment in question had been assigned to Mr. Gatilov unlawfully, as Mr. Gatilov was not considered to be in need of social housing.

4.2 The apartment was previously inhabited by R.A.I. and two of his underage daughters. In 1996, R.A.I died and the two daughters were sent to an orphanage. The apartment was not assigned to the daughters, in violation of article 8 of federal law No. 159-FZ.[3] To rectify this situation, the Yakutsk City Court decided, on 10 March and 27 July 2007, to revoke the author's rights to the property and to assign the apartment to one of the orphaned daughters, R.E.L. At the same time, the court directed the Yakutsk city administration to provide the author with a new residence.

4.3 These two decisions became effective within the procedural timelines, and were not appealed by the author. On 16 September 2007, the court bailiff service initiated enforcement proceedings to evict the author. The eviction was carried out by a court bailiff, P.E.A., on 19 September, while the author was not present. The author's belongings were taken out of the apartment and given to K.M.C.[4] At a later time, all this property was lost.[5]

4.4 By a decision of the Yakutsk City Court dated 8 June 2012, the actions of the court bailiffs in securing private property were considered unlawful. The rest of Mr. Gatilov's claims were rejected for lack of substantiation.[6] Mr. Gatilov also asked the court to initiate criminal proceedings against officers of the court bailiff service. On 30 May 2008, this

[2] The author does not submit the outcome of that review. Additional information regarding the complaints was provided by the State party and the author after the communication was registered by the Committee. See paragraph 5.1.

[3] The law on additional guarantees of social support of orphaned children, adopted in 21 December 1996.

[4] The State party does not identify this person as having any connection with the author.

[5] The State party does not provide any specific details relating to the loss of property.

[6] It is not clear what other claims were rejected by the court.

complaint was returned to the author on procedural grounds and, on 16 June, dismissed for lack of substantiation. The author did not appeal this decision.

4.5 The author also complained to the prosecutor's office. The Prosecutor's Office for the City of Yakutsk carried out several examinations,[7] but on several occasions, the office refused to initiate criminal proceedings. The last such decision was adopted on 4 August 2012, on the grounds that the court bailiff officers had not committed any crimes.

4.6 Regarding the court decision dated 27 July 2007, which directed that the author be provided with a different apartment, the State party submits that the author himself, through a representative, E.O.A, asked for a change in the decision. By a court decision dated 21 November 2008, the part of the decision regarding a different apartment was changed to monetary compensation, which the author received on 27 February 2009 in the amount of 1,980,000 roubles.[8]

4.7 The State party therefore submits that the author's claims are unsubstantiated and are inadmissible, since he failed to exhaust available domestic remedies.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 28 January 2012 and 23 April 2013, the author reiterated his claims against the State party. He submits that the inviolability of private property is protected by the Constitution of the Russian Federation. The prosecutor's office seized the author's property, claiming that it was needed by two orphans. The orphans in question did not need an apartment, as they already lived in a property that had been assigned to them by the authorities.

5.2 The author further contends that according to the national legislation, the authorities must first provide alternative housing before an eviction can take place. The alternative property should be indicated in the court decision relating to the eviction. The author submits that the authorities did not provide him with alternative housing, and that the authorities did not have the right to enter his residence without his being present.

5.3 The author further submits that his property was taken from him during his absence and despite his numerous requests, it was never returned. The authorities have not been able to tell him definitively what happened to his property and belongings, which he has not seen since.[9]

Additional observations

From the State party

6.1 On 19 June and 19 December 2013 and 29 January and 16 July 2014, the State party reiterated its initial arguments regarding the lawfulness of the court decisions against the author adopted by the Yakutsk City Court on 10 May and 27 July 2007. Furthermore, the author was paid 1,980,000 roubles in lieu of receiving another apartment.

6.2 On 17 September 2010, the author filed a complaint with the Yakutsk City Court, demanding an award for damages caused by the court bailiffs and compensation for "moral damages". Since the actions of the court bailiffs were never held to be illegal, this lawsuit was returned to the author without being considered. On 27 March 2011, the author's appeal was rejected by the Supreme Court of the Republic of Sakha (Yakutia). Additionally, the Yakutsk City Court rejected the author's claims on 28 September, and this decision was upheld by the Supreme Court on 9 November.

6.3 The author initiated another complaint regarding his lost belongings, which resulted in rejection by the Supreme Court of the Russian Federation on 14 December 2012. These court decisions indicate that there have been no violations of the rights and freedoms of the

[7] It is not clear what these examinations entailed.

[8] Approximately €44,000 at the time, according to the exchange rate website www.xe.com.

[9] It transpires from the submissions that the property was given for safekeeping to a private person, K.M.C. There is no further information regarding the whereabouts of the author's belongings.

author. The author therefore failed to substantiate his victim status, which makes his claims inadmissible under articles 1 and 2 of the Optional Protocol.

6.4 On 19 December 2013, the State party submitted that the author's complaints had also been rejected on 14 May by the Yakutsk City Court and on 25 July by the Supreme Court of the Republic of Sakha (Yakutia). The State party claims that these decisions were not appealed in cassation and supervisory proceedings.

6.5 On 16 July 2014, the State party submitted that the author had appealed these decisions in cassation proceedings, but not in supervisory proceedings.

From the author

7.1 The author provided additional submissions on 28 August and 16 December 2013 and on 20 February, 15 May and 18 September 2014. The author insists on his position that the authorities did not have the right to "evict him to nowhere", without providing him with different housing.

7.2 The author further submits that the State party failed to compensate him for the loss of his belongings, which he calculates to be worth 762,125 roubles and 80 kopecks.[10] Additionally, he has asked the court to award 120,000[11] roubles as compensation for "moral damages" and all the time he lost chasing his property. He submits that he provided detailed calculations of damage. Nevertheless, all his claims were rejected by the courts and the prosecutor's office, as described above.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claims contained in a communication, the Committee must, in accordance with rule 93 of its rules of procedure, decide whether it is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee takes note of the State party's argument that the author failed to exhaust domestic remedies. Specifically, the State party claims that the author failed to submit a request for supervisory review proceedings, while acknowledging that he did file a cassation appeal. The Committee recalls its jurisprudence according to which filing requests for supervisory review with the president of a court directed against court decisions which have entered into force and depend on the discretionary power of a judge constitute an extraordinary remedy, and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case.[12] However, the State party has not shown whether and in how many cases petitions to the president of the Supreme Court for supervisory review procedures were successful in civil cases concerning eviction and compensation for loss of property. Accordingly, the Committee concludes that it is not precluded by article 5 (2) (b) of the Optional Protocol from considering the communication.

8.4 The Committee has taken note of the author's claims under articles 2 (1) and (3), 6, 12 and 26 of the Covenant. In the absence of any further pertinent information on file,

[10] Approximately €18,771 at the time, according to the Central Bank of the Russian Federation, www.cbr.ru.

[11] Approximately €2,955 at the time, according to the Central Bank of the Russian Federation, www.cbr.ru.

[12] See communications No. 836/1998, *Gelazauskas v. Lithuania*, Views adopted on 17 March 2003, para. 7.4; No. 1851/2008, *Sekerko v. Belarus*, Views adopted on 28 October 2013, para. 8.3; Nos. 1919-1920/2009, *Protsko and Tolchin v. Belarus*, Views adopted on 1 November 2013, para. 6.5; No. 1784/2008, *Schumilin v. Belarus*, Views adopted on 23 July 2012, para. 8.3; and No. 1814/2008, *P.L. v. Belarus*, decision of inadmissibility adopted on 26 July 2011, para. 6.2.

however, the Committee considers that the author has failed to sufficiently substantiate, for purposes of admissibility, these allegations. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

8.5 In the Committee's view, the author has sufficiently substantiated, for the purposes of admissibility, his remaining claims under article 14 (1) as they relate to the author's absence during the eviction hearings and article 17 (1) of the Covenant, declares them admissible and proceeds with its consideration of the merits.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

9.2 The Committee notes the author's contention that he was not summoned for the eviction hearings and, therefore, was not present during the hearings. The State party in its observations does not challenge the fact that the author was absent during the hearings, nor does it suggest that the author was properly served with a notice to appear and failed to be present. The Committee recalls its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, in which it states that article 14 "encompasses the right to access to the courts" in cases of determination of "rights and obligations in a suit at law". Further: "Access to administration of justice must effectively be guaranteed in all such cases to ensure that no individual is deprived, in procedural terms, of his/her right to claim justice."[13] In the present case, the author's access to the courts was effectively barred by the mere fact that he was not informed and, therefore, was not present at the eviction hearings. The Committee considers that in the circumstances, and in the absence of the State party's explanations regarding the failure to notify the author of the date and time of the eviction hearings, the State party violated the author's rights under article 14 (1) of the Covenant.

9.3 The Committee also notes the author's claims that he was unlawfully evicted from an apartment where he resided with his family and that in the process his belongings were given to a private citizen, were subsequently misplaced and could not be recovered. The State party claims that the eviction took place pursuant to a court order and, in addition, absolves itself of responsibility for the loss of the author's belongings. Accordingly, the Committee must decide whether the State party's interference with the privacy of the author's home was arbitrary or unlawful. The Committee recalls its general comment No. 16 (1988) on the right to privacy, in which it defines "unlawful" as meaning "that no interference can take place except in cases envisaged by law". The law itself, then, "must comply with the provisions, aims and objectives of the Covenant, and should be, in any event, reasonable in the particular circumstances".[14]

9.4 In this regard, the Committee notes the author's claim that the national legislation prohibits eviction without providing alternative housing. The Committee notes that the decision by the Yakutsk City Court dated 27 July 2007 gives a similar interpretation regarding the prohibition of eviction without providing an alternative. The Committee also notes that the author was not convoked for the court hearings related to his eviction, that he was not even present during the eviction proceedings of his residence and that his request for compensation for the loss of his belongings was rejected. It also remains undisputed that the author's belongings were given to a private person and, ultimately, never recovered and that he was never compensated, although he received monetary compensation in lieu of receiving different housing from the authorities. In view also of the fact that the author was evicted without being provided a different place to live, and that the eviction was carried out in a manner contrary to the domestic legislation and the court decision dated 27 July 2007, the Committee considers that, in the particular circumstances, the State party's interference with the author's right to the privacy of his home was arbitrary and unlawful, in violation of article 17 (1) of the Covenant.

[13] See general comment No. 32, para. 9.

[14] See general comment No. 16, para. 3.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it discloses a violation of the author's rights under articles 14 (1) and 17 (1) of the Covenant.

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to take appropriate steps to provide the author with adequate compensation, including for the loss of the author's personal belongings, the court fines, the legal costs and other related fees, and any other uncompensated harm suffered. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party.